

Andree Greenberg - Save The Bay requests joint NEPA/CEQA review for Cargill

From: Stephen Knight <sknight@savesfbay.org>
To: Bruce Wolfe <BWolfe@waterboards.ca.gov>
Date: 3/28/2012 11:43 AM
Subject: Save The Bay requests joint NEPA/CEQA review for Cargill
CC: <dwhyte@waterboards.ca.gov>, <tmumley@waterboards.ca.gov>, <agreenberg@waterboards.ca.gov>, Shin-Roei Lee <SRLee@waterboards.ca.gov>
Attachments: SaveTheBay-SMW letter re Joint NEPA-CEQA Mar12.PDF

Dear Bruce –

We wanted to be sure that you saw Save The Bay's letter requesting joint NEPA/CEQA review for Cargill's controversial salt pond development proposal in Redwood City.

Thank you.

--
Stephen Knight
Political Director, Save The Bay
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March 27, 2012

Via U.S. Mail

Mayor Alicia Aguirre
City of Redwood City
P.O. Box 391
Redwood City, CA 94064-0391

Jared Blumenfeld, Regional Administrator
Pacific Southwest Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

LTC Torrey DiCiro
U.S. Army Corps of Engineers
San Francisco District
1455 Market Street, 16th Floor
San Francisco, CA 94105

Ren Lohofener, Regional Director
Pacific Southwest Region
U.S. Fish & Wildlife Service
2800 Cottage Way, W - 2606
Sacramento, CA 95825

Re: Cargill Redwood City Salt Pond Development Project

Dear Mayor Aguirre, Colonel DiCiro, Mr. Lohofener and Mr. Blumenfeld:

This firm represents Save The Bay in connection with the proposal by Cargill and DMB Associates to build a new city on 1,436 acres of restorable San Francisco Bay salt ponds in Redwood City (Cargill Saltworks Project). We are writing to respectfully request that, pursuant to the National Environmental Policy Act (NEPA), a Federal lead agency be designated in connection with the Cargill Saltworks Project. In addition, we urge Redwood City and the applicable Federal lead agency to prepare a joint environmental document for the Project pursuant to the California Environmental Quality Act (CEQA) and NEPA.

For nearly three years, the City has been processing the Cargill Saltworks Project application. The City has retained consultants, commissioned technical studies, and begun the environmental review process. During this time, it has become evident that the Project will require permits or authorizations from multiple federal agencies,

including the U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency (USEPA) and the U.S. Fish & Wildlife Service (USFWS). In fact, DMB is currently in pre-application coordination with USACE and USEPA in connection with its Clean Water Act §404 permit and these agencies have already expressed concerns about the potential impacts from the Project. Given the extensive environmental resources on the site, and the broad range of Project activities that will potentially harm these resources, the Federal agencies' regulatory roles will necessarily be complex. Consequently, it is of paramount importance that a Federal lead agency under NEPA promptly be identified so that all future efforts regarding environmental review for the Project occur effectively and efficiently.

In addition, given that the Cargill Saltworks Project will require extensive Federal regulatory review, it is prudent that the City and the lead Federal agency collaborate during the environmental review process. To this end, we urge the City and the Federal lead agency to act as "joint lead agencies" and prepare a single CEQA/NEPA document. Such an approach is efficient and facilitates streamlined environmental review. CEQA expressly encourages the preparation of joint documents, recognizing that Federal law generally prohibits a Federal agency from using an EIR prepared by another agency unless the Federal agency was involved in the preparation of the document. CEQA Guidelines §15222. Similarly NEPA encourages cooperation between Federal, state and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements. 40 CFR 1506.2 (b).

At the outset, we wish to underscore that the decision whether to prepare a joint CEQA/NEPA document does not rest with the applicant. Rather, the responsibility for deciding whether to conduct joint environmental review rests with the governmental agencies charged with implementing CEQA/NEPA, and their decision should be based solely on whether such a document will best serve the important public policies underlying these statutes.

Particularly with respect to the Cargill Saltworks Project, there are numerous reasons to pursue such a consolidated approach to environmental review and to initiate this process as soon as possible. First, the City has disclosed that DMB is currently revising the Cargill Saltworks Project. Following DMB's completion of this revision, the City anticipates releasing a revised project description, initiating a second public scoping process, and publishing a revised notice of preparation (NOP). It is during this upcoming environmental scoping process that the City also intends to release a preliminary set of Project alternatives. *See Notice of Preparation and Initial Study*, October 2010 at 1. Thus far, the City has not yet made publicly available any of the

Project alternatives that are under consideration. We strongly encourage the City and the Federal lead agency to use the window of opportunity offered by the forthcoming scoping process to develop a coordinated analytic approach to environmental review and ultimately share responsibility for management of the environmental documentation. Such a collaboration could commence with the agencies' publication of a joint NOP/Notice of Intent (NOI) and culminate with the publication of the environmental impact report/environmental impact statement (EIR/EIS).

Second, a scoping process that incorporates NEPA necessarily places Project alternatives front and center in the environmental review process. Indeed, the alternatives evaluation process pursuant to Federal regulations is an extraordinarily fruitful exercise. Not only does NEPA require a rigorous exploration and objective evaluation of all reasonable alternatives, but also the Clean Water Act prohibits a federal agency from issuing a permit if a practicable alternative exists that is less damaging to the aquatic environment. 40 C.F.R. §§1502.14 and 230.10(a)(3). Given that the Cargill Saltworks Project and its alternatives are currently being developed, it is imperative that the Federal lead agency play an instrumental role early in this effort.

Indeed, NEPA requires Federal agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as Federal involvement in their proposals can be foreseen. 40 CFR §1501.2(d).¹ Importantly, this approach is "intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the *applicant for a Federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.*" *Id.* (emphasis added).

Here, members of the public have already expressed considerable concern that the applicant may be seeking to eliminate from consideration alternatives that could retain the entire Project site as open space, as the City's General Plan expressly envisions, while simultaneously meeting the Project's underlying purpose of meeting the City's housing needs via "in-fill" housing in the City's downtown and other already developed

¹ See also Council on Environmental Quality (CEQ), NEPA's Forty Most Asked Questions, available at: <http://ceq.hss.doe.gov/nepa/regs/40/1-10.HTM#1>.

areas. Preparing a joint CEQA/NEPA document would help to ensure that such alternatives receive the meaningful review they deserve.

Third, a commitment to a single CEQA/NEPA document at the outset would ensure the public is sufficiently educated as to the Cargill Saltworks Project's Federal regulatory structure and that this education occurs as early as possible in the planning process. While the public is relatively familiar with, and tends to actively engage in the CEQA process, it is less knowledgeable of the opportunities to provide input during the Federal regulatory process. According to the CEQ, "the permitting and NEPA processes should be integrated or run concurrently in order to have an effective public participation and an efficient decision making process. "A Citizen's Guide to the NEPA," December 2007 at 25.²

Indeed, it is most expedient for the public to voice its opinions about particular project alternatives as early as possible in the environmental review process. "Some of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate in the EIS." A Citizen's Guide at 14. If the Federal lead agency's alternatives' analysis does not play out in a transparent manner -- with full public participation -- the public may identify an alternative late in the process that does not have the benefit of comparative analysis with the other Project alternatives. To ensure meaningful public involvement at the earliest possible stage in the Cargill Saltworks Project planning process, the City and the lead Federal agency should commit to preparing a single environmental document.

Finally, in addition to ensuring comprehensive environmental review and meaningful public involvement, undertaking a joint environmental document makes sound fiscal sense. In today's economic climate, governmental resources are constrained, to put it mildly. Budget cutbacks have resulted in downsizing of governmental agency staff. Duplication or redundancy in the environmental review process is therefore inefficient and expensive, and a poor use of taxpayers' financial resources.

In conclusion, to ensure an effective and efficient environmental review process in connection with the Cargill Saltworks Project, Save The Bay urges the Federal

² A Citizen's Guide to the NEPA available at:
<http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/hddo/gatewaysouth.Par.44369.File.dat/05-citizens-guide-NEPA.pdf>.

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agencies to promptly designate a Federal lead agency and to coordinate with Redwood City and prepare a single CEQA/NEPA document.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in black ink, appearing to be 'R' followed by a long horizontal stroke.

Robert "Perl" Perlmutter
Laurel L. Impett, AICP, Urban Planner

cc: Stephen Knight, Save The Bay

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& WEINBERGER LLP